

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JANICE WALLEY
a.k.a. JANICE GAIL WALLEY
67 Claremont Avenue
Orinda, CA 94563

Registered Nurse License No. 250934

Respondent

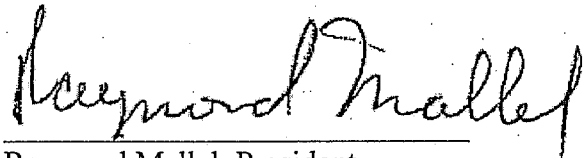
Case No. 2012-599

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 21, 2012.**

IT IS SO ORDERED **August 24, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Number **2012-599**

13 **JANICE WALLEY,**
14 **a.k.a. Janice Gail Walley**
15 **67 Claremont Avenue**
Orinda, California 94563

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 **Registered Nurse License Number 250934**

17 Respondent.
18

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Complainant Louise R. Bailey, M.Ed., R.N., is the Interim Executive Officer of the
23 Board of Registered Nursing (Board), Department of Consumer Affairs. She brought this action
24 solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney
25 General of the State of California, and by Gregory Tuss, Deputy Attorney General.

26 2. Respondent Janice Walley, a.k.a. Janice Gail Walley, is unrepresented in this matter.

27 3. On or about February 28, 1975, the Board issued Registered Nurse License Number
28 250934 to Respondent. This registered nurse license was in full force and effect at all times

1 relevant to the charges brought in Accusation No. 2012-599 and will expire on June 30, 2012,
2 unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-599 was filed before the Board and is currently pending against
5 Respondent. This Accusation and all other statutorily required documents were properly served
6 on Respondent on April 3, 2012. Respondent timely filed her Notice of Defense contesting the
7 Accusation. A copy of Accusation No. 2012-599 is attached as Exhibit A and incorporated by
8 reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel and understands the
11 charges and allegations in Accusation Number 2012-599.

12 6. Respondent is fully aware of her legal rights in this matter, including the right to a
13 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
14 her own expense; the right to confront and cross-examine the witnesses against her; the right to
15 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
16 compel the attendance of witnesses and the production of documents; the right to reconsideration
17 and court review of an adverse decision; and all other rights accorded by the California
18 Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
20 every right set forth above.

21 CULPABILITY

22 8. Respondent admits the truth of each and every charge and allegation in Accusation
23 Number 2012-599.

24 9. Respondent agrees that her registered nurse license is subject to discipline and she
25 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
26 below.

27 ///

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 250934 issued to Respondent Janice Walley, a.k.a. Janice Gail Walley, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and

1 distinct condition. If any condition of this Order, or any application thereof, is declared
2 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
3 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
4 and enforceable to the fullest extent permitted by law.

5 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
6 detailed account of any and all violations of law shall be reported by Respondent to the Board in
7 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
8 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
9 45 days of the effective date of the decision, unless previously submitted as part of the licensure
10 application process.

11 **Criminal Court Orders.** If Respondent is under criminal court orders, including
12 probation or parole, and the order is violated, this shall be deemed a violation of these probation
13 conditions, and may result in the filing of an accusation or a petition to revoke probation.

14 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
15 the conditions of the Probation Program established by the Board and cooperate with
16 representatives of the Board in its monitoring and investigation of the Respondent's compliance
17 with the Board's Probation Program. Respondent shall inform the Board in writing within no
18 more than 15 days of any address change and shall at all times maintain an active, current license
19 status with the Board, including during any period of suspension.

20 Upon successful completion of probation, Respondent's license shall be fully restored.

21 3. **Report in Person.** Respondent, during the period of probation, shall appear in
22 person at interviews/meetings as directed by the Board or its designated representatives.

23 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
24 practice as a registered nurse outside of California shall not apply toward a reduction of this
25 probation time period. Respondent's probation is tolled, if and when she resides outside of
26 California. Respondent must provide written notice to the Board within 15 days of any change of
27 residency or practice outside the state, and within 30 days prior to re-establishing residency or
28 returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain

1 prior approval from the Board before commencing or continuing any employment, paid or
2 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
3 performance evaluations and other employment related reports as a registered nurse upon request
4 of the Board.

5 Respondent shall provide a copy of this Decision to her employer and immediate
6 supervisors prior to commencement of any nursing or other health care related employment.

7 In addition to the above, Respondent shall notify the Board in writing within seventy-two
8 (72) hours after she obtains any nursing or other health care related employment. Respondent
9 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
10 separated, regardless of cause, from any nursing, or other health care related employment with a
11 full explanation of the circumstances surrounding the termination or separation.

12 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
13 Respondent's level of supervision or collaboration before commencing or continuing any
14 employment as a registered nurse, or education and training that includes patient care.

15 Respondent shall practice only under the direct supervision of a registered nurse in good
16 standing (no current discipline) with the Board, unless alternative methods of supervision or
17 collaboration (e.g., with an advanced practice nurse or physician) are approved.

18 Respondent's level of supervision and/or collaboration may include, but is not limited to
19 the following:

20 (a) Maximum – the individual providing supervision or collaboration is present in the
21 patient care area or in any other work setting at all times.

22 (b) Moderate – the individual providing supervision and/or collaboration is in the
23 patient care unit or in any other work setting at least half the hours Respondent works.

24 (c) Minimum – the individual providing supervision and/or collaboration has person-
25 to-person communication with Respondent at least twice during each shift worked.

26 (d) Home Health Care – if Respondent is approved to work in the home health care
27 setting, the individual providing supervision or collaboration shall have person-to-person
28 communication with Respondent as required by the Board each work day. Respondent shall

1 maintain telephone or other telecommunication contact with the individual providing supervision
2 or collaboration as required by the Board during each work day. The individual providing
3 supervision or collaboration shall conduct, as required by the Board, periodic, on-site visits to
4 patients' homes visited by Respondent with or without Respondent present.

5 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in
6 any private duty position as a registered nurse, a temporary nurse placement agency, a traveling
7 nurse, or for an in-house nursing pool.

8 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
9 registered nursing supervision and other protections for home visits have been approved by the
10 Board. Respondent shall not work in any other registered nursing occupation where home visits
11 are required.

12 Respondent shall not work in any health care setting as a supervisor of registered nurses.
13 The Board may additionally restrict Respondent from supervising licensed vocational nurses or
14 unlicensed assistive personnel on a case-by-case basis.

15 Respondent shall not work as a faculty member in an approved school of nursing or as an
16 instructor in a Board-approved continuing education program.

17 Respondent shall work only on regularly assigned, identified and predetermined worksites
18 and shall not work in a float capacity.

19 If Respondent is working or intends to work in excess of 40 hours per week, the Board
20 may request documentation to determine whether there should be restrictions on the hours of
21 work.

22 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
23 successfully complete courses relevant to the practice of registered nursing no later than six
24 months prior to the end of his probationary term.

25 Respondent shall obtain prior approval from the Board before enrolling in the courses.
26 Respondent shall submit to the Board the original transcripts or certificates of completion for the
27 above required courses. The Board shall return the original documents to Respondent after
28 photocopying them for its records.

1 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
2 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
3 amount of \$3082.00. Respondent shall be permitted to pay these costs in a payment plan
4 approved by the Board, with payments to be completed no later than three months prior to the
5 end of the probation term.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one-year extension, all original conditions of probation
11 will apply.

12 12. **Violation of Probation.** If Respondent violates the conditions of her probation,
13 the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay
14 order and impose the stayed discipline (revocation or suspension) of Respondent's license.

15 If, during the period of probation, an Accusation or Petition to Revoke Probation has been
16 filed against Respondent's license or the Attorney General's Office has been requested to prepare
17 an Accusation or Petition to Revoke Probation against Respondent's license, the probationary
18 period shall automatically be extended and shall not expire until the Accusation or Petition has
19 been acted upon by the Board.

20 13. **License Surrender.** During Respondent's term of probation, if she ceases
21 practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of
22 probation, Respondent may surrender her license to the Board. The Board reserves the right to
23 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
24 take any other action deemed appropriate and reasonable under the circumstances, without further
25 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
26 longer be subject to the conditions of probation.

27 Surrender of Respondent's license shall be considered a disciplinary action and shall
28 become a part of Respondent's license history with the Board. A registered nurse whose license

1 has been surrendered may petition the Board for reinstatement no sooner than the following
2 minimum periods from the effective date of the disciplinary decision:

3 (1) Two years for reinstatement of a license that was surrendered for any reason other
4 than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

6 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
7 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
8 assistant, who is approved by the Board before the assessment is performed, submit an
9 assessment of the Respondent's physical condition and capability to perform the duties of a
10 registered nurse, including a determination as set forth below in Condition 16, "Rule-Out
11 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
12 the Board. If medically determined, a recommended treatment program will be instituted and
13 followed by the Respondent with the physician, nurse practitioner, or physician assistant
14 providing written reports to the Board on forms provided by the Board.

15 If Respondent is determined to be unable to practice safely as a registered nurse, the
16 licensed physician, nurse practitioner, or physician assistant making this determination shall
17 immediately notify the Board and Respondent by telephone, and the Board shall request that the
18 Attorney General's office prepare an Accusation or Petition to Revoke Probation. Respondent
19 shall immediately cease practice and shall not resume practice until notified by the Board.
20 During this period of suspension, Respondent shall not engage in any practice for which a license
21 issued by the Board is required until the Board has notified Respondent that a medical
22 determination permits Respondent to resume practice. This period of suspension will not apply to
23 the reduction of this probationary time period.

24 If Respondent fails to have the above assessment submitted to the Board within the 45-day
25 requirement, Respondent shall immediately cease practice and shall not resume practice until
26 notified by the Board. This period of suspension will not apply to the reduction of this
27 probationary time period. The Board may waive or postpone this suspension only if significant,
28 documented evidence of mitigation is provided. Such evidence must establish good faith efforts

1 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
2 Only one such waiver or extension may be permitted.

3 **15. Mental Health Examination.** Respondent shall, within 45 days of the effective
4 date of this Decision, have a mental health examination including psychological testing as
5 appropriate to determine her capability to perform the duties of a registered nurse, including a
6 determination as set forth below in Condition 16, "Rule-Out Substance Abuse Assessment." The
7 examination will be performed by a psychiatrist, psychologist, or other licensed mental health
8 practitioner approved by the Board. The examining mental health practitioner will submit a
9 written report of that assessment and recommendations to the Board. All costs are the
10 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
11 result of the mental health examination will be instituted and followed by Respondent.

12 If Respondent is determined to be unable to practice safely as a registered nurse, the
13 licensed mental health care practitioner making this determination shall immediately notify the
14 Board and Respondent by telephone, and the Board shall request that the Attorney General's
15 office prepare an Accusation or Petition to Revoke Probation. Respondent shall immediately
16 cease practice and may not resume practice until notified by the Board. During this period of
17 suspension, Respondent shall not engage in any practice for which a license issued by the Board
18 is required, until the Board has notified Respondent that a mental health determination permits
19 Respondent to resume practice. This period of suspension will not apply to the reduction of this
20 probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within the 45-day
22 requirement, Respondent shall immediately cease practice and shall not resume practice until
23 notified by the Board. This period of suspension will not apply to the reduction of this
24 probationary time period. The Board may waive or postpone this suspension only if significant,
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
26 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
27 Only one such waiver or extension may be permitted.

28 **16. Rule Out Substance Abuse Assessment.** If the examiner conducting the physical

1 or mental examination determines that Respondent is dependent upon drugs or alcohol, or has
2 problems with drugs or alcohol (i.e., drug dependence in remission or alcohol dependence in
3 remission) that might reasonably affect the safe practice of nursing, then Respondent must further
4 comply with the following additional terms and conditions of probation:

5 (A) PARTICIPATE IN A TREATMENT/REHABILITATION PROGRAM FOR
6 CHEMICAL DEPENDENCE. Respondent, at her expense, shall successfully complete during
7 the probationary period or shall have successfully completed prior to commencement of probation
8 a Board-approved treatment/rehabilitation program of at least six-months duration. As required,
9 reports shall be submitted by the program on forms provided by the Board. If Respondent has not
10 completed a Board-approved treatment/rehabilitation program prior to commencement of
11 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
12 a program. If a program is not successfully completed within the first nine months of probation,
13 the Board shall consider Respondent in violation of probation.

14 Based on Board recommendation, each week Respondent shall be required to attend at
15 least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
16 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by
17 the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent
18 shall be added. Respondent shall submit dated and signed documentation confirming such
19 attendance to the Board during the entire period of probation. Respondent shall continue with the
20 recovery plan recommended by the treatment/rehabilitation program or a licensed mental health
21 examiner, or other ongoing recovery groups.

22 (B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD ALTERING) DRUGS.
23 Respondent shall completely abstain from the possession, injection or consumption by any route
24 of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except
25 when the same are ordered by a health care professional legally authorized to do so as part of
26 documented medical treatment. Respondent shall have sent to the Board, in writing and within
27 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
28 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the

1 medication will no longer be required, and the effect on the recovery plan, if appropriate.

2 Respondent shall identify for the Board a single physician, nurse practitioner, or physician
3 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
4 monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood-
5 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
6 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
7 considered addictive have been prescribed, the report shall identify a program for the time limited
8 use of any such substances.

9 The Board may require the single coordinating physician, nurse practitioner, or physician
10 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
11 medicine.

12 (C) SUBMIT TO TESTS AND SAMPLES. Respondent, at her expense, shall participate
13 in a random, biological fluid testing or a drug screening program which the Board approves. The
14 length of time and frequency will be subject to approval by the Board. Respondent is responsible
15 for keeping the Board informed of Respondent's current telephone number at all times.
16 Respondent shall also ensure that messages may be left at the telephone number when she is not
17 available and ensure that reports are submitted directly by the testing agency to the Board, as
18 directed. Any confirmed positive finding shall be reported immediately to the Board by the
19 program and Respondent shall be considered in violation of probation.

20 In addition, Respondent, at any time during the period of probation, shall fully cooperate
21 with the Board or any of its representatives, and shall, when requested, submit to such tests and
22 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
23 hypnotics, dangerous drugs, or other controlled substances.

24 If Respondent has a positive drug screen for any substance not legally authorized and not
25 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
26 files a Petition to Revoke Probation or an Accusation, the Board may suspend Respondent from
27 practice pending the final decision on the Petition to Revoke Probation or the Accusation. This
28 period of suspension will not apply to the reduction of this probationary time period.

1 If Respondent fails to participate in a random, biological fluid testing or drug screening
2 program within the specified time frame, Respondent shall immediately cease practice and shall
3 not resume practice until notified by the Board. After taking into account documented evidence
4 of mitigation, if the Board files a Petition to Revoke Probation or an Accusation, the Board may
5 suspend Respondent from practice pending the final decision on the Petition to Revoke Probation
6 or the Accusation. This period of suspension will not apply to the reduction of this probationary
7 time period.

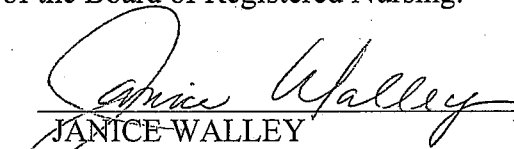
8 (D) THERAPY OR COUNSELING PROGRAM. Respondent, at her expense, shall
9 participate in an on-going counseling program until such time as the Board releases her from this
10 requirement and only upon the recommendation of the counselor. Written progress reports from
11 the counselor will be required at various intervals.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand
14 the stipulation and the effect it will have on my Registered Nurse License. I enter into this
15 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
16 to be bound by the Decision and Order of the Board of Registered Nursing.

17 Dated:

18 20 June 2012

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20 JANICE WALLEY
21 Respondent
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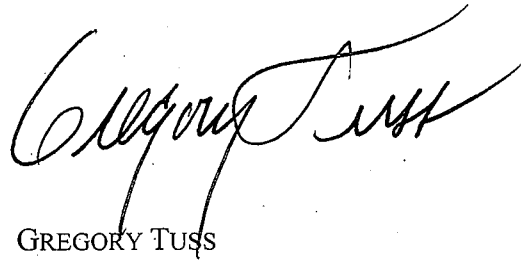
1 **ENDORSEMENT**

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
4 Affairs.

5 Dated: June 29, 2012

Respectfully submitted,

6 KAMALA D. HARRIS
7 Attorney General of California
8 DIANN SOKOLOFF
9 Supervising Deputy Attorney General.

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11 GREGORY TUSS
12 Deputy Attorney General
13 *Attorneys for Complainant*

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Exhibit A
Accusation No. 2012-599
15

STIPULATED SETTLEMENT (Accusation 2012-599)

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
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4 State Bar No. 200659
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6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.: 2012-599

13 **JANICE WALLEY,**
14 **a.k.a. Janice Gail Walley**
15 **67 Claremont Avenue**
16 **Orinda, CA 94563**
17 **Registered Nurse License No. 250934**

ACCUSATION

Respondent.

18 Complainant alleges:

PARTIES

19 1. Complainant Louise R. Bailey, M.Ed., R.N., brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about February 28, 1975, the Board of Registered Nursing issued Registered
23 Nurse license number 250934 to Respondent Janice Walley, a.k.a. Janice Gail Walley. This
24 Registered Nurse license was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on June 30, 2012, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 2750 provides:

"Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein."

6. Section 2759 provides:

"The board shall discipline the holder of any license, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

"(a) Suspending judgment.

"(b) Placing him upon probation.

"(c) Suspending his right to practice nursing for a period not exceeding one year.

"(d) Revoking his license.

"(e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper."

7. Section 2764 provides:

"The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

STATUTORY AUTHORITY

8. Section 490, subdivision (a), provides:

"In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

9. Section 2761 provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct

•

• • •

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

10. Section 2762 provides, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • •

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

1 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license.

4 “(c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof.”

9 COST RECOVERY

10 11. Section 125.3, subdivision (a), provides, in pertinent part:

11 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
12 proceeding before any board within the department . . . upon request of the entity bringing the
13 proceedings, the administrative law judge may direct a licentiate found to have committed a
14 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case.”

16 FACTUAL BACKGROUND

17 12. On or about August 28, 2010, at about 9:05 p.m., Respondent was driving her vehicle
18 in Mendocino, California. A California Highway Patrol officer saw her weaving within the lane
19 and then veering outside the right edge line by several feet and almost hitting a guard rail.

20 13. The officer stopped Respondent. When she got out of her car to get her driver's
21 license in the back, she had poor balance and staggered. The officer smelled the odor of an
22 alcoholic beverage on her breath. Respondent said that she had two glasses of wine earlier that
23 evening.

24 14. Respondent submitted to field sobriety test (FST) procedures. During the FSTs, she
25 displayed horizontal nystagmus, or involuntary eye movement. She was unable to properly
26 perform the “one leg stand.” During the “Rhombberg” test, Respondent estimated a 30 second
27 period to be 9 and 24 seconds, and swayed during the count. Respondent did not complete a
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1 preliminary alcohol screening because she either blew too softly into the device or covered the
2 tube with her tongue.

3 15. Based on Respondent's driving pattern, objective signs of intoxication, admission,
4 and poor performance during the FSTs, the officer arrested her for violating Vehicle Code section
5 23152, subdivision (a) (driving under the influence of an alcoholic beverage). The district
6 attorney later charged her with also violating Vehicle Code section 23152, subdivision (b)
7 (driving while having a 0.08 percent or higher blood alcohol content), with a special allegation
8 pursuant to Vehicle Code section 23578 that she had a blood alcohol content of 0.15 percent or
9 higher.

10 16. On or about February 28, 2011, in the Superior Court of California, Mendocino
11 County, case number MCTM-CRTR-10-14593-1, entitled *The People of the State of California*
12 *vs. Janice Gail Walley*, Respondent pled no contest to a misdemeanor violation of Vehicle Code
13 section 23152, subdivision (b). The other count and the special allegation were dismissed.
14 Sentencing was suspended, and Respondent was placed on summary probation for a period of
15 five years, which included, but was not limited to, the following terms: enrolling in a driving
16 under the influence program, not driving with a measurable amount of alcohol in her blood, and
17 serving 48 hours' incarceration.

18 **FIRST CAUSE FOR DISCIPLINE**
19 **Criminal Conviction**
(Bus. & Prof. Code, §§ 490, subd. (a); 2761, subd. (f))

20 17. The allegations of paragraph 16 are realleged and incorporated by reference as if fully
21 set forth.

22 18. Respondent has subjected her Registered Nurse license to disciplinary action under
23 sections 490, subdivision (a), and 2761, subdivision (f), for a criminal conviction. As set forth in
24 paragraph 16 above, she was convicted of a misdemeanor violation of Vehicle Code section
25 23152, subdivision (b).
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1 **SECOND CAUSE FOR DISCIPLINE**
2 **Unprofessional Conduct – Use of Alcoholic Beverage in a Manner Dangerous or Injurious**
3 **to Self or Public**
4 **(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (b))**

5 19. The allegations of paragraphs 12-16 are hereby realleged and incorporated by
6 reference as if fully set forth

7 20. Respondent has subjected her Registered Nurse license to disciplinary action under
8 section 2761, subdivision (a), as defined by section 2762, subdivision (b), for unprofessional
9 conduct. As set forth in paragraphs 12-16 above, she used alcoholic beverages in a manner
10 dangerous or injurious to herself or the public by driving while intoxicated.

11 **THIRD CAUSE FOR DISCIPLINE**
12 **Unprofessional Conduct – Criminal Conviction**
13 **(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (c))**

14 21. The allegations of paragraphs 12-16 are hereby realleged and incorporated by
15 reference as if fully set forth

16 22. Respondent has subjected her Registered Nurse license to disciplinary action under
17 section 2761, subdivision (a), as defined by section 2762, subdivision (c), for unprofessional
18 conduct. As set forth in paragraphs 12-16 above, she was convicted of a misdemeanor violation
19 of Vehicle Code section 23152, subdivision (b), for driving while intoxicated.

20 **PRAYER**

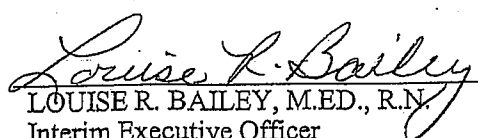
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

- 23 1. Revoking or suspending Registered Nurse license number 250934, issued to Janice
24 Walley, a.k.a. Janice Gail Walley;
25 2. Ordering Janice Walley, a.k.a. Janice Gail Walley, to pay the Board of Registered
26 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
27 Business and Professions Code section 125.3; and
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3. Taking such other and further action as deemed necessary and proper.

DATED: April 03, 2012


LOUISE R. BAILEY, M.ED., R.N.
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar No. 200659
1515 Clay Street, 20th Floor
5 P.O. Box 70550
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6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.: 2012-599

12 **JANICE WALLEY,**
a.k.a. Janice Gail Walley
13 67 Claremont Avenue
Orinda, CA 94563
14 **Registered Nurse License No. 250934**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Louise R. Bailey, M.Ed., R.N., brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about February 28, 1975, the Board of Registered Nursing issued Registered
23 Nurse license number 250934 to Respondent Janice Walley, a.k.a. Janice Gail Walley. This
24 Registered Nurse license was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on June 30, 2012, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 2750 provides:

“Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, “license” includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.”

6. Section 2759 provides:

“The board shall discipline the holder of any license, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

“(a) Suspending judgment.

“(b) Placing him upon probation.

“(c) Suspending his right to practice nursing for a period not exceeding one year.

“(d) Revoking his license.

“(e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper.”

7. Section 2764 provides:

“The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.”

STATUTORY AUTHORITY

8. Section 490, subdivision (a), provides:

“In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

9. Section 2761 provides, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be admissible evidence thereof.”

10. Section 2762 provides, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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17 serving 48 hours' incarceration.

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3. Taking such other and further action as deemed necessary and proper.

DATED: April 03, 2012

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